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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 11 1992

Federal Communications Commission
Office of the Secretary

In the Matter of	)	
	)	
Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers	)	CC Docket No. 92-26

REPLY

BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") hereby submit reply comments in the above-captioned proceeding.[1] BellSouth maintains its view that certain proposals to streamline the adjudication of formal complaints would subordinate fair and well-reasoned decisionmaking to the goal of expedience. These proposals must be rejected. Likewise, the Commission should not entertain suggestions to expand the scope of self-executing discovery or to adopt a disciplinary mechanism analogous to Rule 11.

DISCUSSION

In initial comments BellSouth opposed the NPRM proposal which would shorten defendant's time to file an answer from 30 days to 20 days after service. Many parties have observed that this modification would severely constrain

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[1] Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers, CC Docket No. 92-26, Notice of Proposed Rulemaking, 7 FCC Rcd 2042 (1992), (hereinafter "NPRM"). Over twenty parties, including BellSouth, filed initial comments on April 21, 1992.

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defendant's ability to investigate factual claims and prepare a reasonable defense[2]; no party has identified a countervailing benefit. Accordingly, the Commission should reject this proposal. For analogous reasons, the Commission should also retain the current 30-day period now accorded litigants to file interrogatory answers and respond to document production.

BellSouth does not object to a bifurcated complaint proceeding wherein the issue of damages is addressed separately and subsequent to a determination of liability. Indeed, current rules will accommodate this approach, which the Commission has employed on at least one occasion to BellSouth's knowledge.[3] BellSouth continues, however, to believe that the bifurcation of discovery is procedurally unworkable, would generate numerous collateral disputes and should not be adopted.[4]

Several parties echo BellSouth's concern regarding the proposal to issue oral rulings on discovery and other

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[2] E.g., FCBA, pp. 3-4; NYNEX, pp. 2-3.

[3] See Western Union Telegraph Co. v. Southern Bell Tel. & Tel. Co. and South Central Bell Tel. Co., E-87-47 and E-87-53.

[4] Accord, GTE, p. 5. At least one party would prohibit any discovery until the Commission has ruled on outstanding motions to dismiss. NYNEX, p. 7. Whether or not this recommendation is adopted, it is clear that the goals of administrative economy and prompt adjudication of complaints will be much advanced simply by rendering an early decision on such dispositive motions.

interlocutory matters.[5] BellSouth remains persuaded that codified provisions governing the delegation of authority, which are not addressed in the current rulemaking, do not permit assignment of this responsibility to Commission staff.[6] Further, BellSouth believes that the use of oral rulings effective upon issuance would be inconsistent with regulations pertaining to public notice and Commission review of interlocutory decisions. This ill-conceived proposal would undermine fundamental due process rights of the litigants and ultimately impede rather than promote streamlined complaint resolution.

The NPRM has also proposed to eliminate objections to discovery predicated upon lack of relevance and to treat such objections as an admission of allegations contained in the discovery request. BellSouth and virtually every other filing party has opposed this suggestion, which suffers from

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[5] "...USWC has a strong bias against oral orders. Oral orders do not provide a proper record and invariably lead to disputes as to what was actually ordered if not promptly memorialized." USWC, p. 4. "...[V]erbal rulings without a Court reporter will be subject to interpretation and memory lapses of one or both parties." Allnet, Attachment A, p. xiv.

[6] Ameritech proposes that complaints raising issues of fact be referred to an ALJ for supervision of discovery and adjudication. Ameritech, pp. 7-8. BellSouth does not oppose this suggestion, which Ameritech rightly notes is consistent with APA requirements; however, in BellSouth's experience, virtually all formal complaints present some factual issues and would therefore require ALJ referral under the suggested standard.

serious constitutional and procedural infirmity.[7] BellSouth urges the Commission to be guided by these concerns and thus adopt no change which would curtail the availability of relevance objections.

Finally, a few parties advocate changes in the Commission's rules which were not contemplated in the NPRM and which BellSouth opposes on the merits. These include proposals to expand the scope of self-executing discovery[8] and to adopt a disciplinary mechanism analogous to the federal courts' Rule 11.[9] As to the former, the present rules reflect a careful balancing of the need to compile a full decisional record and the advantage of preserving a simpler, more streamlined administrative process. To increase the general availability of discovery mechanisms beyond what is now permitted will obviously add to the complexity of complaint proceedings and likely delay resolution. Further, it cannot be assumed that more permissive rules will enhance the fairness of proceedings or the quality of decisions; abusive discovery tactics may even produce the opposite result. Expanded discovery through document production, depositions, etc., is currently available to any litigant upon a showing of special

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[7] See Pacific Companies, p. 5; MCI, pp. 20-22; AT&T, pp. 5-7; GTE, pp. 3-4.

[8] NATA, pp. 6-8.

[9] United Video et al., pp. 16-18.

circumstances. No party has demonstrated that more is needed or desirable.

The proposal to adopt a "Rule 11" applicable to Section 208 complaints is not well advised. The Commission already possesses inherent power to insure the integrity of its proceedings and to discipline parties and their counsel who engage in abusive litigation tactics.[10] No other rules are necessary. Further, the Commission should be wary of adopting any measure which has produced the confusion and inconsistencies attributable to Rule 11 or generated a comparable level of litigation.[11]

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[10] See, e.g., 47 C.F.R. Section 1.17 (Truthful written statements and responses to Commission inquiries and correspondence); 47 C.F.R. Section 1.24 (Censure, suspension, or disbarment of attorneys).

[11] "Rule 11 is aimed partly at relieving federal courts of the burden of processing unnecessary, frivolous claims. Some commentators note that the Rule has generated enough ancillary litigation over the applicability of sanctions (so-called 'satellite litigation') to undercut the goal of reducing the courts' workload." Alan E. Untereiner, A Uniform Approach to Rule 11 Sanctions, 97 Yale L.J. 901, 901 n.7 (1988). See also Note, Plausible Pleadings: Developing Standards for Rule 11 Sanctions, 100 Harv. L. Rev. 630 (1987).

CONCLUSION

In light of the foregoing considerations, BellSouth urges the Commission to adopt rules for the processing and adjudication of formal complaints which are consistent with this reply and the initial comments of BellSouth, filed April 21, 1992.

Respectfully submitted,

BELLSOUTH CORPORATION

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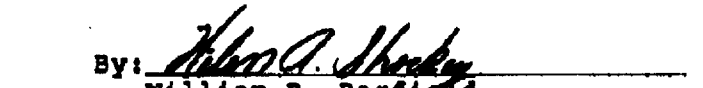
By: 

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This the 11th day of May, 1992.

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